

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SB:5:STL:GL-126455-02

MWB:tnr

date: Jun 10 2002

to: Group Manager , SB/SE, Group 5, Territory 9  
Sunset Hills, Missouri  
Attention: Dennis Hill, Offer Specialist

from: Associate Area Counsel (SB/SE), St. Louis

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subject: **Unenrolled Tax Return Preparer**

By memorandum received in this office on May 14, 2002, advice was sought with respect to both the disclosure of tax return information to, and the scope of authority of, an unenrolled tax return preparer. Specifically, the following questions are raised in your memorandum:

1. Since unenrolled preparers may not appear before the collection function of the Service, is it improper to disclose tax return information concerning collection issues to such individuals?

2. In the event an unenrolled preparer is named in either a Form 2848 or Form 8821, is the Service required to meet a taxpayer's request that copies of correspondence/notices regarding collection issues be provided to the unenrolled preparer?

3. May an unenrolled preparer represent a taxpayer in a case regarding an offer in compromise based on "doubt as to liability," even if the unenrolled preparer did not prepare and the sign the return with respect to which there is a question of liability?

As pointed out in the request for this advisory opinion, the authority of an unenrolled preparer to practice before the Internal Revenue Service is set forth in Rev. Proc. 81-38, 1981-2 C.B. 592; and the scope of an unenrolled preparer's

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ability to practice before the Service is extremely limited.<sup>1</sup> Put simply, an unenrolled preparer can act as a taxpayer's representative **only** with respect to tax returns signed by the unenrolled preparer, **and then only** before examination personnel, Rev. Proc. 81-38, § 4.01. This limitation on an unenrolled preparer's ability to practice before the Service does not, however, on its face make it improper to disclose tax return information relating solely to collection issues to the unenrolled preparer.

As a premise to the first question raised in your request for advice, the following is stated:

Since unenrolled preparers may not appear before the Collection function of the Service, does the same hold true for disclosure of information? For example, when the Service Centers enter these authorizations on the CAF, the system generates a template allowing notices to be sent to the unenrolled person. However, if the unenrolled person does not meet the criteria mentioned in the instructions for Form 2848, or in Publication 470, is the Service in error by disclosing tax information to these persons?

Your memorandum does not clarify what is meant by the phrase does not meet the criteria mentioned in the instructions for Form 2848, or in Publication 470...." That omission is not, however, fatal.

Disclosures of a taxpayer's return information to a taxpayer's authorized representative are permitted under I.R.C. § 6103(e)(6) (authorizing disclosure of returns to attorney-in-fact who is duly authorized in writing) and § 6103(e)(7) (authorizing disclosure of taxpayer's return information where subsection (e) authorizes disclosure of taxpayer's return). A taxpayer may appoint a person to act as an attorney-in-fact by using Form 2848 (Power of Attorney and Declaration of Representative).

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<sup>1</sup>Publication 470 also deals with the ability of an unenrolled preparer to practice before the Service. Pub. 470 is, however, nothing more than a reiteration of Rev. Proc. 81-38.

A taxpayer also may authorize the disclosure of returns and return information to a third party by means of a consent valid under I.R.C. § 6103(c) and Treas. Reg. § 301.6103(c)-1T.

As explained above, an unenrolled preparer may not represent a taxpayer with respect to collection matters. A Form 2848 purporting to authorize an unenrolled preparer to do so would be invalid. However, such an invalid Form 2848 may function as a consent to the disclosure of returns and return information to the unenrolled preparer.<sup>2</sup> In particular, the Form 2848 may be treated as a request by the taxpayer that the IRS disclose the taxpayer's return information to the unenrolled preparer in connection with the taxpayer's tax matter. Treas. Reg. § 301.6103(c)-1T(b). Pursuant to such a consent, the IRS would disclose return information to the unenrolled preparer to the extent considered necessary to comply with the taxpayer's request. See Treas. Reg. § 301.6103(c)-1T(b)(3). The IRS will not disclose tax information pursuant to a consent if the disclosure would seriously impair tax administration. See Treas. Reg. § 301.6103(c)-1T(d)(5).

Using part 7 of a Form 2848, the taxpayer can choose to have "notices and communications" sent to a listed representative. If a taxpayer who is involved in a collection matter provides the IRS with a Form 2848 naming an unenrolled preparer as representative, and such Form 2848 requests that notices and communications be sent to the representative, the IRS may treat the Form 2848 as a consent and send notices and communications to the unenrolled preparer. However, such a

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<sup>2</sup>This issue is addressed by IRM 1.3.3.3.4, as follows:

Although a Power of Attorney (or authorization and declaration) may not be valid for representation purposes, it still may be a valid tax information authorization. For example, if a husband signs a joint return, a power of attorney authorization is not valid with respect to representation of the husband and wife, in the absence of written authorization from the wife to the husband, because both spouses must sign. However, the power of attorney may be a valid tax information authorization for the husband's representative to request and receive returns and return information of the taxpayer.

Form 2848 is not entirely without ambiguity. If the procedures currently followed by collections do not provide that notices and communications to be sent to an unenrolled preparer who is listed as a representative in a Form 2848, I.R.C. § 6103(c) and Treas. Reg. § 301.6103(c)-1T do not require that such procedures be changed.

Thus, the answers to questions 1. and 2. above, are "not if the disclosures are authorized under I.R.C. § 6103(c) and Treas. Reg. § 301.6103(c)-1T" and "no."

Concerning the third question raised in your memorandum, when an offer in compromise based on "doubt as to liability" is submitted, the question of "liability" is resolved by examination personnel. As such, if the unenrolled preparer signed the tax return which is the subject of the "liability" issue, he/she may represent the taxpayer during the analysis of "liability" by examination personnel.<sup>3</sup> This ability to practice before the Service in the area of offers in compromise does not, however, extend to offers in compromise which concern only "doubt as to collectibility" even if the unenrolled preparer signed all of the returns which are subject to a pending offer in compromise. This is due to the fact that "doubt as to collectibility" offers in compromise are within the sole jurisdiction of the Service' collection function; before which an unenrolled preparer is not authorized to act.

As no further action is required of this office with respect to this matter, I am closing our file with this memorandum. In the event you would like to discuss this further, contact me at 314.612.3301.

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MICHAEL W. BITNER  
Associate Area Counsel (SB/SE)

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<sup>3</sup>As noted above, Rev. Proc. 81-38, § 4.01 limits the scope of an unenrolled preparer's authority to practice for the Service **only** before the examination function **and then only** to "matters concerning the tax liability of the taxpayer for the taxable year covered by [a] return" signed by the unenrolled preparer "as its preparer...."